DOCUMENT RESUME

ED 166 995 HE 010 694

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TITLE Redress of Grievances.
PUB DATE [78]
NOTE 17p.

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Administrative Policy; Court Cases; *Employment Practices; *Equal Opportunities (Jobs); Federal Legislation; Females; *Grievance Procedures; Higher Education; *Sex Discrimination; *Teacher Promotion; *Women Professors
IDENTIFIERS *University of Pennsylvania

ABSTRACT

The status of women in higher education, sex discrimination, laws providing protection against sex descrimination, grievance procedures, and difficulties involved in filing complaints are addressed. Empirical evidence is cited that illustrates discrimination against women at the hiring level in the scientific academic community. To substantiate the claim of sex discrimination, it is recommended that evidence be obtained that shows that the number of women hired and promoted at particular levels in a given department is not proportional to the number of women with advanced degrees and appropriate experience in the field. It is claimed that the most satisfactory way to redress a grievance may be to do it privately and internally, but it rarely works. The mechanisms for investigation, appeals and due process, and going to court are discussed. Current trends and practices have not been perceived as equitable by women. Some recent court cases are cited. The Office of the Ombudsman and the faculty grievance procedure at the University of Pennsylvania are discussed. (SW)

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REDRESS OF GRIEVANCES

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We were asked to present this paper because for many years we have both been involved with helping other people in their grievances in various Universities and Federal Courts. Between us we have variously served as Trustee of a major State University, on the Trustees' Committees on Affirmative Action, on Educational Planning and on Finance; chaired a large Department, the Faculty Senate Committee on Academic Freedom and Responsibility, and the Faculty Grievance Commission; served on the Steering Committee of the University Council, the Senate Advisory Committee and the Executive Committee of four different Schools of the University. We have had a wide involvement with the governance of five different schools in our University including Committees on Appointments and Promotions and Admissions Committees of undergraduate, graduate and professional schools.

We will start with a brief look at how women have fared in academe. At the turn of the century women represented 8% of the full professors at the University of Chicago whereas in 1968-69 only 2% of the full professors were women[1]. The records of the mathematics department of the University of California at Berkeley[2] show that in 1928 women held 20% of the tenured or tenure-accruing positions; in 1938 the figure was down to 11%; in 1948 it was 7%; in 1958 it was 3% and in 1969 it was zero. During the period from 1920-29, 10% of the doctorates in mathematics awarded by the department were received by women and between 1960-68 the figure was 6%.

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A major problem has been the long history of actions that have been perceived differently by most males and most females or have been embedded in generally accepted societal values. Thus, many engineers, chemists, veterinarians, mathematicians, etc., were convinced beyond rational argument that theirs was a

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male profession and only the most unusual women could enter and be successful. The existence of "old boy's networks", the ready assumption that a search committee should find the best man for a position, and that women were incompetent, not serious and should be at home, all helped perpetuate the present discriminatory situation.

The beginning of the turnabout for women came at the time the Federal law protecting them against sex discrimination was passed in 1964 when Howard W. Smith, Chairman of the Rules Committee of the U. S. House of Representatives added the word "sex" to Title VII of the Civil Rights Act. Although widely accepted as a joke and as a device to divide the liberals and prevent the passage of the bill, Title VII became law[3]. The Federal laws and regulations concerning sex discrimination in educational institutions are Executive Order 11246 as amended by 11375, Title VII of the Civil Rights Act, the Equal Pay Act of 1963, Title IX of the Education Amendments of 1972 (Higher Education Act), and Titles VII and VIII of the Public Health Service Act. A chart of these laws prepared and updated (June 1977) by the Project on the Status and Education of Women of the Association of American Colleges is available from the Department of Health, Education and Welfare (DHEW)[4]. A very fine discussion of the laws has been prepared by Bernice Sandler[5]. Under Executive Order 11246 as amended by 11375, Affirmative Action Plans including "numerical goals and timetables are required of all contractors with contracts of more than $50,000 or 50 or more employees".

Previously it was virtually impossible to obtain redress of grievances brought on the grounds of discrimination because of sex since nobody has the right to an appointment, promotion or tenure. Nowadays, at least when appointments and promotions are made, the law requires that they should not be discriminatory with regard to sex, race, creed, etc. This also applies to salary levels.

In order to substantiate a claim of sex discrimination a first step is to look for evidence that women are discriminated against at the hiring level in the

institution concerned. There is empirical verification of sex discrimination in hiring practices in the scientific academic community. In the field of psychology for instance, Fidell[6] has shown that academic departments of psychology in 1970 discriminated on the basis of sex. In this study either of two forms, A or B, was sent to the chairmen of each of 228 colleges and universities. Each form described the professional history of hypothetical psychologists and the chairmen were asked to judge the candidate's chances of getting a position. Forms A and B differed in that some of the candidates who were women in one form were described as men in the other and vice versa. The chairmen's responses were such that the modal level of potential offers of position for the women was assistant professor, while for the men it was associate professor. Only the men would have been offered full professorships.

In another study Simpson[7] submitted pairs of resumés to administrators with the descriptive material held constant and the names and photographs of women and men alternated on the two forms. He reported that deans, chairmen and faculty in selected academic fields at six institutions in Pennsylvania rated the men higher than the women.

Lewin and Duchan[8] did a similar study of chairmen of graduate departments of a physical science discipline in institutions of higher education. The chairmen preferred an average male over an average female, but did recognize a clearly superior woman candidate. A significant number of unsolicited comments were returned with the questionnaires accompanying the resumés of the women. The chairmen expressed concern with the fate of the applicant's husband and children. They were also concerned with her compatibility with their department members, leading the authors to state that women faculty in the physical sciences may be evaluated on the basis of different criteria than are men when they compete for academic positions.

Marcus[9] holds that despite the recent widespread use of advertisements for academic positions the network approach is still the most important recruitment

means in Academe. Since the network among senior faculty is predominantly white male, the persistence of this approach as a major technique for identifying promising candidates inevitably leads to a disproportional hiring of protégés who are also white and male.

To substantiate further the claim of sex discrimination, it is recommended that evidence be obtained that the number of women hired and promoted at particular levels in a given department is not proportional to the number of women with advanced degrees and appropriate experience in that field. The basic source of our faculty is the pool of scholars who have earned doctorates in the United States. There is ample statistical information on this pool [10-16]. An example of the use of availability figures follows: Data produced in a study of the coeducational University of Pennsylvania by a Committee on the Status of Women in 1971[17] showed that in the College there were 164 male full professors and zero women. Of 88 departments, 48 had not one woman. Using the information on the number of doctorates earned in the respective fields of study for the appropriate years as an estimate of the proportion of qualified women in each discipline, a comparison was made with the proportion of faculty women found in departments at the University. Out of 33 departments for which this comparison could be made, 26 had less than the expected figure. Even ignoring the fact that most of these departments had no women at all, the probability of this distribution occurring by chance is 6.6×10^{-7}.

Of course it is helpful in substantiating a claim of sex discrimination if the woman is in effect superwoman, and has an outstanding publication list in first-rate refereed journals either as first or sole author, has been extensively cited, and widely recognized. The problem is greater for the merely excellent and good women compared with the equivalent men. The present professoriate, chairpersons and external referees, the promotions committees, deans and provosts' staffs are overwhelmingly male. Although they nowadays usually deny any sex

bias, the results of their actions do not satisfy most women in academe. It is relevant that a committee of the Women's Faculty Club at the University of Pennsylvania examined virtually all the possible ways of determining excellence or quality in academe and found that nearly all of them had a strong built-in sex bias.

Filing an internal grievance or going to Federal court is a very serious matter usually extremely wearing, oppressive and expensive in money, peace of mind and friendships. Every effort should be made to resolve the problems informally, with a little bit or a lot of help from your friends and colleagues.

The most satisfactory way to redress a grievance may well be to do it privately and internally, but this rarely works. The presence of powerful friends, people who care about justice and are not afraid to speak up and act, and a local and national network of women is often crucial.

After exhausting the normal channels of appeal to the chair of the department and the dean of the school, the office of the ombudsman, if it exists, may be helpful. The University of Pennsylvania has had such an office since 1971 and in the first five years of its operation more than 1300 members of the University community-students, staff, administrators and faculty members have sought help from the Ombudsman[18]. This onerous and important position has now been filled serially by three white male professors. About 10% of the complaints were from faculty members and of these about ten cases which reached the Faculty Grievance Commission could not be resolved by informal negotiations.

One of us (R. E. D.) was a member of all the various committees and sub-committees that wrote the Faculty Grievance Procedure of the University of Pennsylvania and helped steer it through the Faculty Senate and University Council. It became operative in May, 1974 and R.E.D. served as Chairperson of the Faculty Grievance Commission for the first two years and as an ordinary member since then. He is currently chairperson of the sub-committee to recommend changes in

the procedure.

The Faculty Grievance Procedure[19] describes formal mechanisms that make possible an investigation of claims "that action has been taken which affects the faculty member's personnel status or terms or conditions of his/her employment and which is: (1) arbitrary and capricious; (2) discriminatory with regard to race, sex, creed or national origin; or (3) not in compliance with University procedures or regulations."

The Faculty Grievance Commission is composed of at least sixteen persons from the University faculty. They include women, members of minority groups and partially affiliated faculty but exclude department chairpersons and members of the administration. They are selected by the Senate Advisory Committee (an elected body of professorial faculty). The members of the Commission normally serve for three-year terms and, in a non-publicized random order, serve as the chairperson of a three-person Inquiry Panel. They are subject to challenge. Two other members of the Panel are selected by the chairperson of the Commission from two lists of three members of the University community eligible to serve on the Commission and selected respectively by the grievant and by the representative of the parties who made the decision that resulted in the grievance. This representative is designated by the Provost. In unusual circumstances, an additional two individuals from the Commission may be asked to serve on a five-person Inquiry Panel.

Informal discussions occur first to try and resolve the matter and to determine that the case is appropriate for the Commission rather than a School Committee on Academic Freedom and Responsibility. In the next step the grievant sends a formal written complaint to the Dean. If there is no reply, or it is unsatisfactory to the grievant, the chair of the Commission appoints an Inquiry Panel.

There are formal procedures concerning the right to be present, to provide evidence and to call and cross-examine witnesses. The Panel has "access to all

documentary evidence relevant to the grievance that was available to the parties who made the decision," and is "authorized to obtain additional documentary evidence and oral testimony on its own initiative such as the dossiers of other members of the same department who recently or currently are alleged to have received more favorable treatment." There are safeguards to maintain confidentiality. The grievant "may be accompanied by a University colleague when appearing at Panel meetings, who may speak on behalf of the grievant," and, if necessary, may have access to confidential information.

The findings of the Panel are based solely on evidence provided according to the procedures and are sent to the grievant and to the Provost with recommendations. These "recommendations are to be accorded great weight," but are advisory to and not binding upon, the Provost.

In cases which involve reappointment, promotion or tenure, and in which the Provost has declined or failed to implement these recommendations to the satisfaction of the grievant, the grievant may obtain a hearing before the Senate Committee on Academic Freedom and Responsibility on the actions of the Provost. The Senate Committee shall then promptly report its findings and recommendations to the President with copies to the Provost and the chairpersons of the Grievance Commission and the Inquiry Panel, and to the grievant and the person acting on behalf of the parties making the decision. A copy shall also be given to the editor of the ALMANAC of the University. This situation has not yet occurred.

Grievance Procedures at other universities vary enormously. Most allow grievances to be initiated based on claims of discrimination on account of race, sex, creed or national origin. Some include political conviction, handicap, age or even membership in, e.g. the American Association of University Professors (AAUP). The AAUP itself has one of the most inclusive lists. The Association's Council approved the following in October 1976[20]. "The Association is committed to use its procedures and to take measures including censure against colleges and

universities practicing illegal or unconstitutional discrimination on a basis not demonstrably related to the job function involved, including but not limited to age, sex, physical handicap, race, religion, national origin, marital status or sexual or affectional preference."

The mechanisms for investigation vary widely, are frequently vague and usually heavily weighted towards the administration. In some cases the president, provost or dean determines the composition of the investigating committee, fixes the rules of procedure and can accept or reject the conclusions. In others the committee is selected from past members of the Faculty Council by the Committee on Academic Freedom, or by the faculty of the University or School.

Many of these people or bodies are overwhelmingly white males, some of whom may well not be sensitive to the special problems of women and minority groups.

In a few cases the grievant may have a right of selection of at least one member of the investigating committee, although the selection may be from, say, present and past members of the Faculty Council, and only rarely from the whole University faculty. Most places have no provision for peremptory challenge of the members or even for challenge for cause.

The rules of procedure are often vague and inadequate and rarely allow the grievant to be present during the investigation, hear evidence, call witnesses, cross examine opposing witnesses and either directly, or indirectly, through an advisor or colleague, have access to the relevant documents and files.

In some cases grievants remain alone, in others they may have a university colleague or counsel present who may speak for them. In some the right to counsel applies to witnesses too and occasionally to the Provost or Dean or whoever is defending the case for the administration.

In nearly all cases the report goes to the Dean, Provost or President who then decides what to do. Few institutions allow further appeals to the President, the Trustees or the Committee on Academic Freedom in the event that the university

official rejects the decisions or recommendations of the investigating committee.

It is sadly clear that what passes for "due process" at many academic institutions is extremely unsatisfactory, unfair and heavily weighted in favor of the status quo and the administration. Where the Provost or the Dean is also the affirmative action officer, the chance of significant conflicts of interest may well be high.

In some universities the faculty has designated the Association of University Professors, the National Educational Association or some other body as the exclusive collective bargaining agent. The agreements usually include many internal processes but may also lead to binding arbitration. This, like a court decision, can compell the administration to act. However, it remains to be seen whether arbitrators who, like Federal judges, are predominantly older white males, will act in cases involving claims of discrimination with respect to sex, in ways perceived to be fair by members of the various organizations of Professional women.

So far the procedures have not generally been perceived by women as resulting in equitable treatment. Women who protest, file grievances or go to court are almost uniformly disappointed, bitter and in financial and personal distress. They become known as "trouble makers", are black-listed and frequently have the greatest difficulty or even find it impossible to remain active in their chosen profession[21].

Despite help from the Association for Women in Science (AWIS), the National Organization for Women (NOW) and its legal defense fund, Women's Equity Action League (WEAL), various State Human Relations Commissions, the Equal Employment Opportunity Commission (EEOC) and the Department of Health Education and Welfare (HEW) of the Federal Government, trials in Federal courts can easily take years to resolve, cost many hundreds of hours of administrators' and faculty members' time, and cost hundreds of thousands of dollars. They can also result in much unfavorable publicity to all concerned. Much of the profit, if any, seems to go to some of

the attorneys.

Although some institutions have gone through this whole process and have usually won the legal battle, several have chosen to settle out of court by negotiation. These include most of the cases that have come to a reasonably satisfactory conclusion. In our view, it is clearly necessary to improve procedures and morality and thus the chance of justice being done.

From a direct knowledge of many grievance cases in many parts of the United States, some internal to the educational institutions and some that have reached the courts, we are distressed at the behavior of some professors, chairmen, deans, provosts, presidents and trustees in the last few years. This behavior has included failure to operate and abide by the grievance procedures, attacks on the integrity of members of hearing committees, broken promises, lies and deception. More specifically, they have involved severe harassment, deliberate solicitation of favorable letters for men and unfavorable ones for women, alteration of letters of recommendation - positively for men and negatively for women, the suppression of unfavorable letters and student comments for men, the suppression of favorable letters and student comments for women, the use of tailor-made advertisements for positions so that only some specific male candidate fits it completely, the falsification of curriculum vitaes, the suppression of the results of departmental and promotion committee votes, the publication by men of professional women's research work without acknowledgement or joint authorship, and the denigration of a woman's researches and the claim that it did not fit into the mission of the department or school, even though that identical line of research was accepted for the initial appointment and was being pursued in many other equivalent institutions.

If the matter gets to court the problems multiply, and there are publications advising administrators on how to win cases and make it as difficult as possible for the plaintiff. For example, Stitt and Limitone[22] published a paper discussing the strategies and tactics that they have found useful in defending institutions against

litigation over claims of sex discrimination. It is worth examining the techniques that at least some institutions find acceptable.

Stitt and Limitone[22] say that often the person against whom the complaint is being made (the respondant) and the concerned government official may be known to each other from religious, community or other activities. As a result of this acquaintance the government official may ask for an "off-the-record meeting" without lawyers about the complaint. The authors state:"Indeed, we have yet to be embarrassed by such informal approaches which often result in resolving immediately unjustified complaints".

Concerning the demand for university records, the authors say that these demands are always subject to discussion and negotiation. With regard to conciliation efforts, Stitt and Limitone[22] note that conciliation is a ". . . convenient and appropriate means of gaining time...". Since, they say, HEW compliance review teams do not tend to become involved during the conciliation stage, more time can be gained.

They recommend pleading as a defense by a university that the complainant has failed to exhaust a union contract or an intra-university grievance procedure. It is clear that one of their important defenses is to demonstrate that universities are unique institutions and that complaints against them should be handled differently from the way complaints are handled against business corporations. They discuss the way to prevent the complainant from using a hearing for discovery of necessary data that the complainant requires.

Among the other tactics employed by Stitt and Limitone[22] are: challenging any agency's jurisdiction if the complainant has communicated about the grievance with any other Federal or State agency; and suggesting that the second investigator contact his predecessors (here the authors note that they ". . . have never had any difficulty with EEOC in this area.")

Sometimes a complainant seeks an injunction to prevent the university from

terminating her employment, since she maintains that she will probably prevail on the merits of the case and the injunction will prevent irreparable injury. Stitt and Limitone[22] here advise the University to answer by demonstrating that the termination was due to: financial stresses; departmental reorganization; insubordination; a more qualified applicant; etc. The university should also, according to these authors, direct the court's attention to the complainant's right to termination benefits and unemployment insurance. They even state that the court should be reminded that if the complainant is successful she can be awarded back pay with no loss of seniority. This last is, of course, unreasonable for any academic person, but particularly when the complainant is a scientst who is operating a research project since terminating her can clearly cause irreparable injury in the laboratory and in obtaining and continuing her funding from outside agencies.

We hope that universities will change the direction in which their lawyers have been taking them. Universities' attorneys too often act like most other attorneys in that they do everything necessary to win the case for their clients, and they perceive their clients to be the administration of the universities rather than the community of scholars. It is surely the job of the faculty and staff to remind them who their clients really are, and to prevent members of the administration from acting in an inhumane fashion. One of the signs of a great university may well be the resources it places at the service of women and minorities.

What is the current situation in academe as it bears on the future of academic women? In the courts the recent case of Sweeney v. the Board of Trustees of Keene State College was heard by the U. S. Court of Appeals, First Circuit (Boston). Dr. Christine Sweeney won her case in the U. S. District Court for New Hampshire and the judgment was affirmed on appeal on January 4, 1978. The district court had found that Dr. Sweeney had been a victim of sex discrimination in her second effort to gain promotion and ordered her promotion backdated to 1975 with the appropriate back pay. Senior Circuit Judge Tuttle said that the judges were rejecting an

effort by the defendants ". . . to elevate the quantum of proof [of discriminatory motivation] to such a level that a litigant is necessarily doomed to failure". The judges voiced misgivings over "...the notion that the courts should keep 'hands off' the salary, promotion, and hiring decisions of colleges and universities." Citing their awareness that Congress has evidenced a concern for the status of women in academia they cautioned ". . . against permitting judicial deference to result in judicial abdication of a responsibility entrusted to the courts by Congress."

Of great interest is the judges'[23] acceptance of statistical evidence that a double standard was applied in promotion decisions. An important part of the case was the evidence ". . . that the person who nominally served as affirmative action coordinator did virtually nothing to advance the rights of women on the Keene campus." Many academic women will find that this statement has an all too familiar ring. Another hopeful sign is the recent out of court settlement in the case of Lamphere v. Brown University et al.[24]

Universities are still concerned about the possibility that HEW will withold, terminate, deny or suspend their Federal Contracts. This can be done by HEW's Office for Civil Rights which can refuse to certify the university as a responsible contractor when there are allegations that there has been substantial deviation from a university's approved affirmative action plan. It will be very interesting to see how the Carter Administration will act in this regard to fulfill its obligations to women scientists. Colleges and universities who do not submit Title IX forms assuring HEW that their institutions are in compliance with the ban on sex discrimination in federally aided programs will face possible withdrawal of federal funds according to Secretary of HEW, Joseph Califano[25].

At the end of February 1978 President Carter sent to Congress a plan to consolidate Federal programs to combat job discrimination[26]. Enforcement powers are expected to be concentrated in the Equal Employment Opportunity Commission (EEOC)

which has received a 35% increase in its enforcement budget. The EEOC would have the responsibility of developing standards applicable to the entire Federal Government as well as developing government-wide complaint and compliance review methods.

The Department of Health, Education and Welfare (DHEW) has established a system to expand and broaden its present requirements for the appraisal of Public Health Service (PHS) supervisors in meeting their Equal Employment Opportunity (EEO) responsibilities[27]. Since the memorandum states that it is the responsibility of supervisors to take actions clearly demonstrating that the principles of EEO are incorporated into the activities of the PHS and since supervisors will be evaluated on how they meet these responsibilites, academic institutions may well expect a more rigorous appraisal from DHEW. A more rigorous concern for fair employment practices is long overdue.

As Dr. Yalow said during her recent visit to Stockholm, "What women need is the equal opportunity they have not yet achieved."[28]

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